

2120 L Street, NW
Suite 650
Washington, D.C. 20037
Tel. 202-263-1650
Fax. 202-776-0078
e-mail: gharris@neca.org

RECEIVED

ORIGINAL

APR 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Gina Harrison
Senior Counsel and Director

Washington Office

April 24, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **Ex Parte Notice:** Local Number Portability, CC Docket No. 95-116; Jurisdictional Separations, CC Docket No. 80-286; Universal Service, CC Docket No. 96-45; Average Schedules, CC Docket No. 00-199; Communique Telecommunications, Inc., CC Docket No. 99-290; Telecommunications Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 90-571

Dear Ms. Salas:

Yesterday, Robert Anderson, President, Kenneth Levy, Vice President and General Counsel, and I—all of NECA, met with Commissioner Gloria Tristani and her Legal Advisor, Sarah Whitesell on the above-referenced matters. A summary of the discussion is attached.

In accordance with FCC rules, I am including two copies of this notice. Kindly make it part of the record in these proceedings, and direct any questions to me.

Sincerely,



Gina Harrison
Attachment

Cc: Commissioner Gloria Tristani
S. Whitesell

Rural Issues Ripe for Action

NECA NATIONAL EXCHANGE
CARRIER ASSOCIATION

The Commission Needs to Act Now

- On Separations Freeze (CC Docket No. 80-286)
- On Cost Recovery for Non-LNP Capable Carriers (CC Docket No. 95-116)
- On Removal of the Rural Cap (CC Docket No. 96-45)
- On Average Schedule Simplification (CC Docket No. 00-199)
- On Funds Owing to Universal Service Fund (CC Docket No. 99-290)
- On TRS Cost Recovery (CC Docket No. 90-571)

Separations Freeze Needed Now

- The Commission first sought comment on a separations freeze in its *NPRM* on October 7, 1997. This *NPRM* invited State Members of the Joint Board to develop a report.
- On December 21, 1998, State Members filed a report outlining issues to be addressed by the Joint Board.
- On July 21, 2000, the Federal-State Joint Board released a *Recommended Decision* to implement a freeze.
- On September 25, 2000 NECA, with other telephone associations, submitted joint comments in response to the Commission's *Public Notice* on the *Recommended Decision*.
- The Joint Board cites several reasons why a separations freeze should be put in place:
 - predictability of separations results as new services and technologies are deployed in the marketplace;
 - reduction of regulatory burdens;
 - regulatory parity between incumbent LECs and competitive LECs,
 - competitive neutrality.

Separations Freeze Needed Now

- Loss of revenues from distortions are making it more difficult to fund upgrades for advanced services in rural areas.
- Complements the RTF and MAG proposals.
- Complements, but is not contingent upon, the Commission's review of reciprocal compensation for ISP-bound traffic.
- Separations freeze needed now to avoid further distortions in the jurisdictional separations process and to allow unfettered consideration of long-term reform.
- This jurisdictional misallocation will cost NECA pool members \$170 million (based on 1998 figures) that will not be recovered in interstate access rates. Carriers will have to raise local rates, thus hurting consumers.

LNP Cost Recovery Needed

- All LECs, LNP & non-LNP capable incur LNP costs
 - for LNP Database Administration
 - for Regional Database upkeep, queries, and end office software.
- LECs also incur one-time costs when converting to LNP capability.
- FCC rules permit LNP-capable LECs to recover one-time costs and ongoing costs via end user charges for a five-year period, but they may keep recovering on-going costs as normal business expenses, *i.e.*, in access rates.
- No recovery method has been specified for costs incurred by non-LNP-capable LECs. These costs should also be treated as normal business expenses.

LNP Costs Must Be Recovered

- Treatment of ongoing LNP costs should be consistent for LNP-capable and non-LNP-capable LECs: Ongoing costs should be recovered in access charges.
- FCC disfavors end user charges where consumers get no direct benefits.
 - end user charges should be “designed so that end users generally receive the charges only when and where they are reasonably able to begin receiving the direct benefits of local number portability” *Third Report and Order*, 13 FCC Rcd 11,701 at ¶ 142.
- Change in TS rate will be small.
 - Based on responses from 75% of pooling LECs (Feb. 2000), NECA estimated annual costs for the total pool of \$3.6 M (0.36% of TS Revenue).
 - Equivalent to \$0.0002 per minute of use.

Remove the Rural Cap

- NECA agrees with the RTF that the high cost loop (HCL) fund be re-based and a new cap factor be applied on a going-forward basis. Re-basing should result in an increase to the HCL fund of approximately \$118.5 million, consisting of \$83.9 million for the indexed fund cap and \$34.6 million for the corporate operations expense limitation.
- NECA also supports the Rural Task Force (RTF) recommendation to remove the rural cap on companies involved in merger or acquisition transactions. The Commission should extend the same relief to all other companies upon which individual caps were similarly imposed.
- Shortfalls caused by artificial “caps” on high-cost funding creates serious impediments to the continued advancement of universal service in areas that are most in need of such funding.
- The Commission has already recognized that these funding caps should not be applied indefinitely.
- These modifications to the HCL cap are needed to provide appropriate incentives to invest in rural America while maintaining the HCL fund at a reasonable level.

Average Schedule Simplification

- Commission should consolidate review of NECA's average schedule formulas with its review of NECA's access tariff filings to avoid redundancy.
- Biennial Review Staff Report & FCC Order both agreed that average schedule simplification is in order.
- Prior to 1984 there was no approval of average schedule formulas. They were included in AT&T tariffs, which were subject to the Commission's normal tariff review and complaint processes.
- NECA's average schedule "access" formulas are filed on December 31, and take effect in the next access tariff period (July 1 through June 30), effectively requiring a *six-month notice period* for proposed revisions to the average schedules -- a review period that is twelve times longer than that required for tariff filings. This is so despite that fact that average schedule filings include fewer companies, smaller revenue requirements and less year-to-year variation in revenue requirements than these other filings.
- There would be ample checks and balances if the Commission were to consolidate average schedule formulas with its review of NECA's access tariff filing.

FCC Action Needed Now for Debt Collection

- Starting in July 1992, Communique Communications, Inc. (Communique) refused to pay the universal service charges NECA assessed. Communique filed its petition for declaratory ruling in April 1993.
- InterContinental Telephone Corporation (ITC) received its first invoice in January 1995. ITC filed its petition for declaratory ruling contesting the assessment in May 1995.
- In August, 1999, the FCC ruled in NECA's favor.
- On September 8, 1999, Communique and ITC filed a Petition for Reconsideration. NECA filed Comments on October 7, 1999.
- The Lifeline Assistance and Universal Service Fund debts that are the basis of this matter are the subject of a complaint for nonpayment in the US District Court for the District of New Jersey. NECA filed this case on Nov. 15, 1995. The District Court case was stayed pending the Commission's decision.
- The Communique/ITC case can be quickly resolved by Commission action.
- Communique/ITC currently owes the universal service fund \$8,282,687.

TRS Cost Recovery Can Be Resolved Speedily

- Commission action is necessary to confirm that contributions to the Telecommunications Relay Service (TRS) program are to be recovered by rate-of-return LECs in a manner that is consistent with the recovery of other interstate universal support programs.
- The Commission should declare that its universal service cost recovery rule (*i.e.*, 47 C.F.R. Section 69.4(d)(1)(ii)) encompasses TRS contributions as well as all other universal service support contributions.
- Such declaration would assure consistent and comparable treatment of TRS contributions with contributions for other universal service programs, thereby furthering the Commission's universal service policies.

Conclusion

- The commission needs to act now on
 - a separations freeze,
 - cost recovery for non-LNP capable carriers,
 - removing the rural USF cap
 - average schedule simplification,
 - universal service fund debt obligations,
 - TRS cost recovery.
- Acting now will avoid impeding the nation's rural telecommunications infrastructure.
- Swift resolution of these issues will leave a legacy of support for rural America.